NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOSE GARCIA-COSME, Petitioner, v. U.S. PAROLE COMMISSION, Respondent.	Civil No. 06-5698 (RBK) **OPINION**

APPEARANCES:

JOSE GARCIA-COSME, Petitioner pro se
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KUGLER, District Judge

This matter is before the Court on the petition of Jose Garcia-Cosme for habeas corpus relief under 28 U.S.C. § 2241.[1]

[1] Section 2241 provides in relevant part:
(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. ...
(c) The writ of habeas corpus shall not extend to a prisoner unless-- ... (3) He is in custody in violation of the Constitution or laws or treaties of the United States ... .

The named Respondent, United States Parole Commission, filed its answer to the petition on January 9, 2007, and Petitioner filed objections on or about January 22, 2007. For the reasons set forth below, the Court will deny the petition for lack of merit.

I. BACKGROUND

Petitioner is a federal inmate currently confined at FCI Fort Dix. In 1991, he was sentenced by the United States District Court for the District of Puerto Rico to a term of 10 years in prison and an 8-year term of supervised release, pursuant to his federal conviction on charges of possession with intent to distribute cocaine. (Respondent Exhibit 1, Judgment and Commitment Order). Petitioner states that his offense was committed in June 1987, before the effective date of the Sentencing Reform Act. Respondent confirms that Petitioner was not sentenced under the U.S. Sentencing Guidelines.

On September 17, 1996, Petitioner was mandatorily released pursuant to 18 U.S.C. § 4163.[2] (Resp. Ex. 2, Certificate of Mandatory Release). Under 18 U.S.C. § 4164,[3] Petitioner was to

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[2] The pertinent part of § 4163 reads:

> Except as hereinafter provided a prisoner shall be released at the expiration of his term of sentence less the time deducted for good conduct. A certificate of such deduction shall be entered on the commitment by the warden or keeper.

[3] Section 4164 reads:

> A prisoner having served his term or terms less good-time deductions shall, upon release, be deemed as if released on

be supervised under mandatory release, "as if on parole", under the jurisdiction of the U.S. Parole Commission ("USPC"), until the expiration of his full term date less 180 days, or until March 30, 2000. (Id.).

On November 14, 1997, the USPC issued a warrant for Petitioner's arrest, charging him with violating the conditions of his mandatory release supervision.[4] (Resp. Ex. 3, Warrant Application). A revocation hearing was held and the USPC found that Petitioner was guilty of the charge. Petitioner's mandatory release was revoked, but the time he had spent on mandatory release was credited. Petitioner was ordered to serve five months. (Resp. Ex. 4, Notice of Action, dated February 13, 1998). On April 24, 1998, Petitioner was released under supervision with a total of 886 days remaining on his term of mandatory release, or until September 26, 2000. (Resp. Ex. 5, Certificate of Parole (Reparole)). Petitioner was not entitled to a reduction of 180 days from his full term because he was re-released after his first term of mandatory release was revoked. See Wright v. Blackwell, 402 F.2d 489 (5th Cir. 1968)(180-day

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parole until the expiration of the maximum term or terms for which he was sentenced less one hundred and eighty days.

This section shall not prevent delivery of a prisoner to the authorities of any State otherwise entitled to his custody.

[4] Petitioner was charged with using cocaine on or about September 3, 1997.

reduction does not benefit an individual who has mandatory release revoked and is then re-release on parole); Moore v. Moore, 1993 WL 388278 at *1 (E.D.Pa. Sept. 24, 1993)("a mandatory releasee whose supervision is revoked, loses the benefit of the 180-day [reduction]")(citing Sprouse v. Settle, 274 F.2d 681, 683 (8th Cir. 1960)).

On September 12, 2000, the USPC issued another warrant against Petitioner on new charges of violating conditions of supervision. These charges included: (1) failure to submit supervision reports in a timely manner; (2) failure to report to Supervision Officer as directed; and (3) possession with intent to distribute heroin, cocaine and cocaine base. (Resp. Ex. 6, Warrant Application). This warrant was lodged against Petitioner as a detainer because Petitioner was already in custody awaiting trial and/or disposition of new federal criminal charges, namely, possession with intent to distribute multi-kilograms of narcotic controlled substance (heroin, cocaine and cocaine base). (Resp. Ex. 7, Memorandum on Warrant).

On October 12, 2001, Petitioner was sentenced by the United States District Court for the District of Puerto Rico to 151 months in prison for conspiracy to possess with intent to distribute heroin. The prison term is to be followed by a term of five years supervised release. (Resp. Ex. 8). Thereafter, on October 21, 2002, the USPC supplemented its detainer warrant

against Petitioner to note the information about the drug conviction. (Resp. Ex. 9).

On April 6, 2004, the USPC issued a Notice of Action informing Petitioner of its decision to let the detainer warrant stand. (Resp. Ex. 10). This Notice of Action was in response to Petitioner's challenge of the detainer through administrative remedies he submitted in July 2003. (Petition, "Administrative Remedies Exhausted" at 3).

II. CLAIMS PRESENTED

Petitioner argues that the USPC is without jurisdiction to issue a detainer warrant against him because the USPC was not authorized by federal law to release him on "special parole", pursuant to the Anti-Drug Abuse Act of 1986 ("ADAA"), Pub.L. 99-570, 100 Stat. 3207, 21 U.S.C. § 841 *et seq*. He relies principally on the Supreme Court's decision in Gozlon-Peretz v. United States, 498 U.S. 395 (1991), in which the Court held that a term of supervised release, not special parole, is to be imposed for substantive drug offenses committed after October 27, 1986.

Respondent contends that the petition is without merit because Petitioner was released from custody on mandatory release under 18 U.S.C. § 4163.

III. ANALYSIS

A. Standard of Review

A pro se pleading is held to less stringent standards than more formal pleadings drafted by lawyers. See Estelle v. Gamble, 429 U.S. 97, 106 (1976); Haines v. Kerner, 404 U.S. 519, 520 (1972). A pro se habeas petition and any supporting submissions must be construed liberally and with a measure of tolerance. See Royce v. Hahn, 151 F.3d 116, 118 (3d Cir. 1998); Lewis v. Attorney General, 878 F.2d 714, 721-22 (3d Cir. 1989); United States v. Brierley, 414 F.2d 552, 555 (3d Cir. 1969), cert. denied, 399 U.S. 912 (1970).

B. The Petition Lacks Merit

This Court agrees that the petition is without merit for the reasons set forth by Respondent. Petitioner's release and supervision in 1996, with respect to his 1991 drug conviction, is governed by 18 U.S.C. § 4161 et seq.[5] In 1996, the USPC released Petitioner from custody on mandatory release supervision pursuant to 18 U.S.C. § 4163. The record clearly shows that Petitioner was released under § 4163. The certificate of his release is entitled "Certificate of Mandatory Release" and plainly designates "mandatory release" according to 18 U.S.C. § 4163, not

[5] This chapter was repealed by the Sentencing Reform Act, but its sections remain in effect for sentences imposed prior ro repeal. See United States v. Fazzini, 414 F.3d 695, 698 (7th Cir. 2005), cert. denied, 547 U.S. 1034 (2006).

special parole. In fact, the form used to certify Petitioner's release from custody in 1996 has four designations: (1) Certificate of Mandatory Release; (2) Certificate of Mandatory Release to Special Parole; (3) Certificate of Special Parole; and (4) Certificate of Court Designated Parole. Only "mandatory release" is marked on the form, and not special parole. See Resp. Ex. 2.

Thus, Petitioner erroneously claims that he was released to special parole, the sole basis for his argument that the USPC had no jurisdiction over him. The Supreme Court's decision in Gozlon-Peretz does not apply to Petitioner because he was correctly released from custody to mandatory release supervision under § 4163.

Moreover, the USPC has jurisdiction over Petitioner because he was released from custody on mandatory release pursuant to § 4163. Section 4164 mandates that the USPC must supervise Petitioner "as if on parole" until the expiration of his sentence, less 180 days for good conduct time. See 18 U.S.C. § 4164; 18 U.S.C. § 4210(b)(1); DeCuir v. U.S. Parole Commission, 800 F.2d 1021, 1022-23 (10th Cir. 1986).

Further, courts have consistently held that a mandatory releasee is identical in all respects to a parolee, and is subject to the supervision of the USPC until the expiration of the maximum term, less 180 days. Godoy v. U.S. Board of Parole,

345 F. Supp. 1292, 1296 (C.D. Cal. 1972). A mandatory releasee also is subject to the same conditions of release as a parolee. Donahue v. U.S. Parole Commission, 603 F. Supp. 1310, 1312 (S.D. Fla. 1985). The application of parole conditions under § 4164 to mandatory releasees has been uniformly found to be constitutional. See e.g., Coronado v. U.S. Board of Parole, 540 F.2d 216, 218 (5th Cir. 1976); Desmond v. U.S. Board of Parole, 397 F.2d 386, 391-92 (1st Cir. 1968); Sargis v. U.S. Board of Parole, 391 F. Supp. 362, 365-66 (E.D. Mo. 1975).

Consequently, this Court finds that the USPC had jurisdiction to supervise Petitioner's release from custody based on his mandatory release under §§ 4163 and 4164, and that the issuance of the warrant/detainer in September 2000, before the term of mandatory release had expired for Petitioner's violation of the conditions of his mandatory release, is supported by federal statute and case law as set forth above. Petitioner's contention that he was actually released to special parole, which allegedly was not authorized because his offense date occurred after October 1986, is completely baseless. The petition is denied accordingly.

IV. CONCLUSION

For the reasons set forth above, the petition will be denied for lack of merit. An appropriate order follows.

S/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

Dated: October 5, 2007